BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	))))	Case No. 12-2156-EL-ORD
In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	))))	Case No. 13-0651-EL-ORD
In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40, Regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub.S.B.315,	))))	Case No. 13-0652-EL-ORD

APPLICATION FOR REHEARING OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio) and submits this application for rehearing in response to the Public Utilities Commission of Ohio (Commission) Finding and Order issued on December 19, 2018. Duke Energy Ohio is an Ohio corporation engaged in the business of supplying electricity to customers in southwestern Ohio and is a public utility as defined by Sections 4905.02 and 4905.03 of the Ohio Revised Code (R.C.). Duke Energy Ohio is an Ohio electric distribution utility that is subject to the requirements set forth in R.C.4928.64 and 4928.66.

As recognized by the Commission in its Finding and Order, the original workshop that was held by the Commission to gather public comment regarding the rules contained in Chapters

4901:1-39 and 4901:1-40, O.A.C., was held in April of 2013. Stakeholder comments were filed in early 2014. Between late March 2014 and December 2018, there was no substantive activity in the docket. After nearly a five-year hiatus, during the holidays, the Commission has submitted rules that in the Commission's own words, "make substantial changes to the structure and content of the rules" originally proposed by Staff. Given the time that has passed since the previous workshop and comment period, and the fact that these new rules were issued again four years later, Duke Energy Ohio submits that rehearing is appropriate for many reasons, not the least of which is just the somewhat unorthodox timing of the process. Much has occurred in the intervening years in respect of the electric distribution utilities' programs and portfolios. Also, as recognized by the Commission, the legislative mandates were amended, eliminated, frozen and then reinstituted. Although the current version of the rules may have incorporated changes based upon these legislative actions, stakeholders have not had an opportunity to comment on the rules outside of this current process. As the process now contemplates applications for rehearing and not comments, the process is unnecessarily fettered. Indeed, there appears to be a new-found urgency that did not exist previously. The Company respectfully submits that another round of comments would provide more detailed and complete information that would better inform the Commission in its effort to revamp the energy efficiency regulatory paradigm. In the absence of an opportunity to comment more fully, the Company submits this application for rehearing.

II. DISCUSSION

The Commission's procedural Rule 4901-1-35 governing applications for rehearing states that an application for rehearing must set forth, in numbered or lettered paragraphs, the specific grounds upon which the applicant considers the order to be unreasonable or unlawful. The application must also include an explanation of the basis for each ground so identified.

Accordingly, Duke Energy Ohio reluctantly submits the following issues in the context of an application for rehearing.

A. The newly drafted rules are unreasonable and unlawful in that the Commission has realigned the hearing process in a way that shifts all the business risk to the electric distribution utility.

Perhaps in an effort to make the hearing process more efficient, or at least more timely, the rules now contemplate that electric distribution utilities (EDUs) will file their portfolios annually. Duke Energy Ohio had recommended that the Commission move from a three-year portfolio cycle to a five-year portfolio cycle. Instead, the Commission has opted for an annual cycle that creates much more administrative burden and regulatory uncertainty.

Rule 4901:1-39-06, O.A.C. now specifies that the EDU will also seek any rate adjustment mechanism for recovery of costs along with approval of the portfolio. In the past, Duke Energy Ohio's two portfolio filings were not final and approved for a year and eighteen months respectively. This means that if a portfolio and cost recovery mechanism are filed for approval in September, they will not clear the regulatory process until long after the Company has provided programs and services. This leaves the EDU in limbo and at risk for recovery of costs already incurred in ensuing year. While the EDUs are accustomed to the Commission's audit of costs for prudency, the prospect of proceeding with a portfolio and an expectation of cost recovery for a portfolio and cost recovery mechanism that is still in an ongoing regulatory process is quite a different matter. Although the Commission is expressing the intent to go to a "post-approval" process, rather than a pre-approval process, the current rules do not adequately provide a regulatory process that will work smoothly. Although the rules specify when each of the various elements must be filed, there is no clarification in the rules about what process with ensue after each filing. As it now appears, a 2019 portfolio filing in September for 2020, will not be reviewed until May of 2021, when a rider true-up proceeding begins. By the time interested parties can sort out cost recovery, the plan year will be long past.

One of the complications created by the proposed process is that the Commission has imposed caps on spending for each of the EDUs. These caps have a major impact on the size and cost of an EDU's portfolio as well as the EDUs ability to meet the legislated mandates. The rules do not address this change in portfolio planning and structure. As explained below, given the restrictions on spending that now pertain, the Commission should address parameters for dealing with caps under the circumstances.

Likewise, the process of undergoing an audit of the portfolio and/or cost recovery mechanism is not clearly set forth in these draft rules. The additional reports and processes delineated in the rules are now more confusing rather than less. Indeed, the overall process envisioned by the Commission for managing the regulatory process is somewhat convoluted, unclear and does not seem to represent any improvement over existing processes.

B. The rules are unlawful and unreasonable in that they do not adequately explain the Independent Program Evaluator process.

New rule 4901:1-39-05(B) sets forth the Commission's view of the duties of the Independent Program Evaluator (IPE). In addition to auditing the elements of the annual benchmark status reports filed by the EDUs, the IPE will be tasked with "An evaluation of the electric utility's energy efficiency portfolio plan's programs, measures, cost-effectiveness, and the appropriateness of all costs included in the electric utility's energy efficiency cost recovery riders." This new rule suggests that the IPE will be performing a financial audit. If this is the intended purpose of the rule, such audit will apparently take place long after the EDUs have implemented their portfolios for any given year. This creates enormous uncertainty and business risk.

Additionally, there is no language in any rule detailing how the IPE is to be paid. In the past, the EDUs were ordered to pay for these services. But the Commission has no imposed a cap on spending for all the EDUs. If the cost of the IPE is to be included in program costs, then the cap should be adjusted accordingly or some other arrangement should pertain. It is unreasonable and unlawful for the Commission to add this significant cost after each EDU has already been limited in spending.

The Commission's Finding and Order states that the Commission will direct the IPE to recommend revisions to the Technical Reference Manual (TRM) periodically and that the Commission will update the TRM periodically. Although the Commission "clarifies" that an annual update would likely only require a few changes to align with EM&V techniques, it would nonetheless be necessary for the IPE to review the entire TRM to determine what needs to be updated. This additional work is costly and will increase costs to customers. Again, this is an added cost that was not contemplated when the Commission imposed caps on EE portfolios. The rules must specify that such costs may be omitted when calculating portfolio expenses for purposes of determining caps on spending. This is an example of an additional area that would be ripe for further discussion and clarification. The current rules do not address these issues.

C. The Rules are unreasonable and unlawful because they impose potential burdens upon the electric distribution utilities that are not supported in statute.

In its Finding and Order, and in response to an earlier comment offered by Duke Energy Ohio, the Commission states that the IPE, as well as the utility's evaluator must review its programs. It is unclear if the state's mercantile program is included as part of the EDU's responsibility for verification. This is another directive that adds additional burden on the EDU without providing any means of recovering costs. Duke Energy Ohio requests clarification regarding the Commission's intent with regard to mercantile EM&V.

D. The rules are unreasonable and unlawful in that there is a significant change to language related to how banked energy savings may be applied and the change is not supported by statute.

The Commission proposes to amend Rule 4901:1-39-05(A)(1)(c), O.A.C., to state that banked energy savings may not be used to trigger shared savings, and that the Commission "retains the authority to dictate the appropriate application of banked savings." Order at p.97. This prohibition does not arise from any language contained in statute and represents an arbitrary decision made with no input from stakeholders. As such, it represents a departure from the previous rules and a policy that is contrary to the balance of the Commission's other amendments. To the extent an EDU is able to achieve more energy savings in a given year, and stay under the caps imposed by the Commission for energy efficiency program spending, such savings should be applicable in future years. Accordingly, Rule 4901:1-39-05 (A)(1)(c), should be revised to read as follows:

> (c) Banking surplus energy savings. To the extent that an electric utility's actual energy savings exceed its energy efficiency benchmark for any year, the electric utility may apply such surplus energy savings to its energy efficiency benchmarks for a subsequent year. Banked surplus may be used by the utility to trigger the shared savings incentive. However, the shared savings incentive is only eligible for energy and demand savings achieved in the current program year.~~, but banked surplus energy savings shall not be used to trigger shared savings incentive~~.

III. CONCLUSION

For the reasons set forth above, Duke Energy Ohio respectfully submits that the Commission should permit a new round of comments with respect to the new energy efficiency and peak demand reduction rules, including a workshop. The rules are lacking in specificity in many areas and create more questions than answers. The most confusing elements related to process before the Commission and the expectations at each stage of the process annually and otherwise. Because of these ambiguities, the current proposed rules are unreasonable and unlawful.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 18th day of January 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Elizabeth H. Watts
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